IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

OP.No. 24132 of 2000(W)

PETITIONERS:
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1. **M.K. JOSE,**
   SKILLED WORKER GRADE I (RETIRED),
   SCOOTERS KERALA LTD.,
   VADACKAL.P.O., ALAPPUZHA.

2. **M. KOSHY, SKILLED WORKER GRADE II (RETIRED),**
   SCOOTERS KERALA LTD.,
   VADACKAL.P.O., ALAPPUZHA.

3. **R. GOPALAKRISHNA PILLAI,**
   SKILLED WORKER GRADE I (RETIRED),
   SCOOTERS KERALA LTD.,
   VADACKAL.P.O., ALAPPUZHA.

4. **S. CHANDRA BOSE,**
   SECURITY GUARD (RETIRED),
   SCOOTERS KERALA LTD.,
   VADACKAL.P.O., ALAPPUZHA.

5. **P.N. SASIDHARAN NAIR,**
   SKILLED WORKER GRADE I (RETIRED),
   SCOOTERS KERALA LTD.,
   VADACKAL.P.O., ALAPPUZHA.

6. **T.V. ABRAHAM, SKILLED WORKER GADE II (REIRED),**
   SCOOTERS KERALA LTD.,
   VADACKAL.P.O., ALAPPUZHA.

BY ADV. SRI.FIROZ K.ROBIN,
SRI.J.JULIAN XAVIER.

O.P. 24132/2000:

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY ITS SCRETARY,
   INDUSTRIES DEPARTMENT,
   GOVT. OF KERALA,
   THIRUVANANTHAPURAM.

2. **SCOOTERS KERALA LTD.,**
   REPRESENTED BY ITS MANAGING DIRECTOR,
   VADACKAL.P.O., ALAPPUZHA.

BY ADV. SRI.C.C.THOMAS FOR R2,
GOVT. PLEADER SMT. SMITHA SUKUMAR.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 40768/2000 IN O.P. NO. 24132/2000

DISMISSED

30/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PROCEEDINGS DTD. 23/01/98 OF THE R.2.

EXT.P.2: COPY OF THE APPLICATION DTD. 27/02/98 SUBMITED BY THE P.1. FOR VOLUNTARY RETIREMENT.

EXT.P.3: COPY OF THE SCHEME OF THE R.2. FOR `EMPLOYEES VOLUNTARY RETIREMENT SCHEME 1998'.

EXT.P.4: COPY OF THE INTIMATION TO APPLICANT UNDER VRS RULES 1998 ISSUED BY THE R.2. BY PROCEEDINGS DTD. 01/03/98 TO THE P.2.

EXT.P.5: COPY OF THE RELIEVING ORDER DTD.31/03/98 ISSUED BY THE R.2 TO THE P.1.

EXT.P.6: COPY OF THE PROCEEDINGS NO. 1703/D2/97/ID DTD. 22/07/97.

EXT.P.7: COPY OF THE NOTICE DTD. 26/02/2000 FILED BEFORE THE R.2.

EXT.P.8: COPY OF THE PROCEEDINGS NO. MD. 27/258/2602 DTD. 10/03/2000 OF THE R.2.

RESPONDENT'S EXHIBITS:

EXT.R2.A: COPY OF THE STATEMENT WITH REGARD TO THE PETITIONERS' SERVICE IN THE COMPANY AND V.R.S. COMPENSATION PAID TO THEM.

EXT.R2.B: COPY OF THE ORDER G.O. (MS). NO. 91/98/ID DTD. 22/06/1998 PASSED BY GOVERNMENT.

//TRUE COPY//

P.A. TO JUDGE

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.24132 OF 2000

Dated this the 30th day of July, 2007

JUDGMENT

On 24.5.2007, the following order was issued:

> "The Managing Director of the second respondent will file an affidavit within a period of two weeks from now, making specific averments regarding the following:
>
> Whether Ext.P6 minutes led to any decision by the Company, implementing it. If so, the date of that decision and the date from which the terms of Ext.P6 have been given effect to. It shall be noted that the date of disbursement of the benefits under Ext.P6 is not the relevant date. The date on which the benefits are to be reckoned as accruing on the basis of Ext.P6 shall be specifically stated in that affidavit.
>
> The present financial status and managerial situation in the company shall also be explicitly stated."

2. In obedience to the aforesaid order, additional affidavit dated 26.6.2007 has been placed on record. Ext.R2(b) G.O.(MS) No.91/98/ID dated 22.6.1998 is produced therewith, by which, the pay revision of the employees of the company came into

force with effect from 1.1.1997. The arrears due for the employees who are continuing in service were admittedly released. The petitioners retired on 31.3.1998 under the VRS scheme. The issue arising for decision is as to whether they are entitled to the difference in salary that would inure to them on the basis of Ext.R2(b) Government Order read with clause 5 (1) to Ext.P6 minutes, which are given effect to as per Ext.R3(b) Government Order.

3. The legal entitlement of the petitioners to any amount as claimed by them would depend upon the nature of the relationship between the parties as on the termination of the contract between them, on the petitioners going out of service on VRS, on 31.3.1998. Ext.P6 minutes drawn up, while they were in service, reflects that pay revision which was lying overdue from 1.3.1993 were implemented with effect from 1.1.1997 and arrears due from 1.1.1997 will be disbursed before 1.9.1997. That clause did not work out by the time the petitioners left service on VRS on 31.3.1998. The Government, thereafter, issued Ext.R2(b), whereby, the said decision has been

given effect to as is done in Ext.P6. This means that before snapping of the jural relationship between the petitioners and the employer company, they were entitled to draw the arrears of salary from 1.1.1997 to 31.3.1998 in terms of Ext.R2(g) read with clause 5 (1) of Ext.P6 minutes.

5. The stand of the employer company in opposition to the claim of the petitioners is that in terms of sub clauses 1 and 2 of clause 7 of Ext.P3 scheme for voluntary retirement, the benefit under the scheme shall be final and shall not be subjected to any further adjustment at a later date due to change in the salary, if any, or for any other reasons whatsoever and the employees retiring under that scheme shall not have any claim against the Company on any account, except for the amount payable under the scheme. Ext.P3 voluntary retirement scheme, as is explicit from clause 7 (1) thereof, deals only with the benefits under that scheme and the rights of parties can be worked out in terms of Ext.P3 scheme only with effect from the relevant date on which Ext.P3 would start governing the parties. By Ext.P4 and similar documents, the petitioners were informed that the date on which

the retirement will come into effect and the employment of the respective employee under the company will cease under the scheme was 31.3.1998. Therefore, the rights and liabilities of parties referable to clause 7, including the sub clause therein, of Ext.P3 would govern only their entitlement under the scheme. The entitlement to arrears of salary on account of a pay revision from a prior date, that is, from 1.1.1997, till the date of their cessation of employment made on 31.3.1998 is not a matter that would be governed by the VRS scheme. Therefore, the benefit that the petitioners are now claiming are not taken away by clause 7 (1) of Ext.P3 scheme. Similarly, the embargo in clause 7 (2) of Ext.P3 pinning down the retiring employees to have no claim whatsoever against the Company, except for amounts payable to them under the scheme is also a term that would come into effect only on 31.3.1998, as regards the rights and liabilities from that date and referable to that scheme. It cannot have any application to deprive the employees of their arrears of salary in terms of Ext.R2(b) G.O. read with Ext.P6 minutes. Therefore, the petitioners are entitled to arrears of salary from 1.1.997 to 31.3.1998 in terms of Ext.R2(b).

5. In the affidavit dated 26.6.2007, it has been categorically stated in para 3 that the company has reached near penurious situation.

In the aforesaid circumstances, while allowing the writ petition to the extent of declaring the rights of the petitioners to arrears of salary in terms of Ext.R2(b) with effect from 1.1.1997 to 31.3.1998, it is clarified that their right to recover such amounts will depend upon the statutory liabilities of the company and the petitioners would not have any special right to recover the amounts due to them as found herein, merely because of the declaration granted by this judgment. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.24132 OF 2000

JUDGMENT

30TH JULY, 2007.

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